IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 28800 of 2004(C)

PETITIONER:

KARTHIAYANI, W/O.LATE S.THANKAPPAN,
PULICHUVATTIL, KOMALAPURAM VILLAGE,
NORTH ARYAD P.O., ALAPPUZHA DT.

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:
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1. **UNION OF INDIA REPRESENTED BY**
   THE SECRETARY, MINISTRY OF HOME AFFAIRS,
   FREEDOM FIGHTERS' DIVISION, LOK NAYAK BHAVAN,
   KHAN MARKET, NEW DELHI-110 003.

2. **STATE OF KERALA REPRESENTED BY**
   THE SECRETARY, GENERAL ADMINISTRATION (FFP.A)
   DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.M.L.SURESH KUMAR, ADDL.CGSC
GOVERNMENT PLEADER SMT.N.SUDHADEVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.28800/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR , ALAPPUZHA VIDE ORDER NO.R.DIS. 125445/76/F6 DT. 14.12.76.

EXT.P2:- COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER'S LATE HUSBAND FOR THE GRANT OF SSS PENSION TO THE RESPONDENTS DT. 14.5.98.

EXT.P3:- COPY OF THE PKC ISSUED BY SRI.KUNJAN SUKUMARAN DT. 28.4.98.

EXT.P4:- COPY OF THE PKC ISSUED BY SRI.S.DAMODARAN MLA DT. 29.1.74.

EXT.P5:- COPY OF THE LETTER NO.SR/1030/98/H3 DT. 4.8.99 ISSUED BY THE DIST.COLLECTOR, ALAPPUZHA TO THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE LETTER NO.H3- 1030/00/SR DT. 7.2000 ISSUED BY THE DIST.COLLECTOR, ALAPPUZHA TO THE PETITIONER'S LATE HUSBAND.

EXT.P7:- COPY OF THE NARC ISSUED BY THE CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA.

EXT.P8:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DT. 8.9.04.

/TRUE COPY/

P.S. TO JUDGE

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T.R. Ramachandran Nair, J.

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W.P.(C).NO.28800 of 2004-C

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Dated this the 16th day of August, 2007

JUDGMENT

The petitioner's late husband was a freedom fighter who had actively participated in the Punnapra – Vayalar Movement during the freedom struggle. It is stated that an arrest warrant was issued against him by the Special Magistrate Court, Alappuzha in case No.P.E.7/1122 ME and to evade the arrest, he had gone underground for a period of nine months from October 1946 to July 1947. He was granted pension by the District Collector under the Kerala Freedom Fighters' Pension Rules as evidenced by Ext.P1. He died on 17.4.2003 and the petitioner is getting the family pension under the said Scheme. The petitioner's late husband had submitted an application for pension under the Central Scheme evidenced by Ext.P2, on 14.5.1998 after the Punnapra – Vayalar struggle was recognized by the Government of India as part of National Freedom Struggle with effect from 20.1.1998. The petitioner's late husband had produced the Personal Knowledge Certificate issued by Shri Kunjan Sukumaran (Ext.P3) and also the certificate issued by Shri S. Damodaran (Ex.M.L.A.) (Ext.P4). After scrutiny of the papers, the District Collector has recommended the

application to the State Government, by Ext.P5. Thereafter, by Ext.P6, he was directed by the District Collector to produce official records relating to the arrest warrant issued, etc. or in the absence of the same, NARC issued by the competent authorities. Accordingly, he submitted an application Ext.P7 before the Chief Judicial Magistrate Court, Alappuzha wherein it was recorded that the records are not available in the said court as they have been destroyed as per rules. Therefore, Ext.P7 amounts to a non-availability of record certificate as per the Scheme. After the death of the petitioner's husband, she filed Ext.P8 representation before the State Government requesting to recommend the application for Central Pension. Since no action has been taken thereon, this writ petition was filed.

2. The respondents have filed counter affidavits. In the counter affidavit filed by the first respondent, it is stated that the State Government has been requested on 19.1.2005 to provide copies of all the correspondence exchanged between the Central Government and the State Government and any further action can only be taken after receipt of the same. This was apparently for the reason that the pension file regarding the petitioner's claim is not readily traceable in the Ministry's records.

3. In the counter affidavit filed by the State Government, it is averred in paragraph 5 that after the death of the petitioner's husband, no formal

application is seen submitted by the petitioner as prescribed in the S.S.S. Pension Scheme. It is further stated that after the receipt of the representation Ext.P8 along with Ext.P7, the District Collector submitted a fresh report stating that the non-availability of records certificate only states that records relating to P.E. No.7/122 was not available in the court and as the applicant has not claimed any involvement in P.E.7/1122, the non-availability of records certificate has no relevance and hence he had not recommended the case. It is further stated that the representation along with the enclosures was forwarded to the Government of India with report vide Government letter dated 23.12.2004.

4. The question is whether a fresh application was necessary on the part of the petitioner as claimed by the State Government. Going by the SSS Pension Scheme particularly with reference to clause 12 with the heading 'Duration', a fresh application by a legal heir is necessary when they want to succeed to such pension. Obviously, that refers to a case where the pension was sanctioned in favour of the original freedom fighter and the widow claims to succeed such pension. In this case, such a circumstance is not available as the application by the late freedom fighter itself was not sanctioned. Therefore, a fresh application by the petitioner was not necessary.

5. The other aspect is regarding want of recommendation by the District Collector which was necessary for the State Government to recommend her case. Going by the records produced by the petitioner, it is evident that in Ext.P5, the District Collector had recommended the application of the late husband of the petitioner. This recommendation was made after noticing two facts: (i) that he had been granted Kerala Freedom Fighters' Pension considering his participation in the Punnapra – Vayalar Struggle; and (ii) that the applicant claimed that he had participated in the Punnapra – Vayalar Struggle and was an accused in case No.P.E. 7/1122. Now in paragraph 5 of the counter affidavit, the State has taken a stand that in view of the fact that the applicant has not claimed any involvement in PE 7/1122, the NARC produced was not acceptable and therefore the District Collector has not recommended the case. This approach is highly technical. It is clear from Ext.P5 that the District Collector had also understood the case number as P.E.7/1122 while recommending his case . Only in response to Ext.P6, the NARC was sought for. Case No.PE 7/1122 was clearly mentioned in Ext.P7 and the court has also endorsed that the records are not available in respect of the case.

6. Therefore, it is a clear case where the petitioner had been referring to the case P.E.7/1122 and hence the reason now attributed that because of

non-mentioning of the case number in the application filed by her late husband, the NARC cannot be accepted, is only to be rejected. This court was pleased to consider such cases where the authorities are relying upon minor defects in the application to reject the claim itself. In the judgment in Writ Petition No.31822/2004 considering a similar contention, this court was pleased to hold in the following terms:

> "As held by this court and the Hon'ble Supreme Court in several decisions, certificates produced by freedom fighters need not be scrutinised to such minute details. Ext.P7 certifies that he was an accused in a criminal case. If the petitioner's husband was an accused in a criminal case there would certainly have been a warrant of arrest against him. Therefore, it can safely be presumed that his going underground was pursuant to an award of arrest warrant in the above said criminal case. Therefore, I am satisfied that Ext.P7 is sufficient evidence to show that the petitioner's husband was a freedom fighter coming within the purview of the Freedom Fighters' Pension Scheme and that the petitioner has proved that her husband was in fact a genuine freedom fighter. Therefore, as his widow, the petitioner is entitled to continue to receive Freedom Fighters' Pension."

I respectfully agree with the above view. The application filed by a freedom fighter cannot be rejected for want of such minute details. It is clear that the petitioner had been referring to the case P.E.7/1122 in which her husband was involved.

7. Therefore, the stand taken by the second respondent cannot be appreciated. There will be a direction to the second respondent to forward

due recommendation to the first respondent along with all documents and enclosures within a period of six weeks from the date of receipt of a copy of this judgment. The first respondent will thereafter consider the matter on merits and pass appropriate orders within a further period of two months thereafter. The claim of the petitioner for arrears due to her late husband from the date of receipt of the application, will also be considered while sanctioning the pension.

The Writ Petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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